

1 J. Erik Heath, Esq. (SBN 304683)
2 J. ERIK HEATH, ATTORNEY AT LAW
3 369 Pine St., Ste. 410
4 San Francisco, CA 94104
5 Tel.: (415) 426-7850
6 Fax: (415) 449-6556
7 erik@heathlegal.com

8 Attorney for Plaintiff
9 OSKAR LIZARRAGA-DAVIS

10
11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**

13 OSKAR LIZARRAGA-DAVIS,
14 Plaintiff,

15 v.

16 TRANSWORLD SYSTEMS, INC.;
17 Defendant.

Civil Action No. 5:18-cv-4081-BLF

**DECLARATION OF J. ERIK HEATH IN
OPPOSITION TO DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT**

Date: July 25, 2019
Time: 9:00 a.m.
Courtroom: 3, 5th Floor
Judge: Hon. Beth L. Freeman

18
19 I, J. Erik Heath, being first duly sworn, depose and state under oath as follows:

20 1. I am a member of the State Bar of California and admitted to practice law in all
21 the courts of the State of California. I am in good standing with the Bar of this Court. I am over
22 the age of 18 years, and am competent to testify. The facts contained in this declaration are
23 within my personal knowledge, and I could and would testify truthfully to those facts if called
24 under oath to do so.

25 2. I am counsel for Plaintiff in the above-styled action.
26
27
28

1 3. On January 17, 2019, I served discovery requests on Defendant. Included in the
2 requests were Interrogatories and Requests for Admission. I also believed that I had included
3 Requests for Production of Documents in the package.

4 4. The next day, on January 18, 2019, Defendant filed the instant summary judgment
5 motion.

6 5. The following week, on Friday, January 25, 2019, at 5:35 P.M., Defendant's
7 counsel, Damian P. Richard, advised me that my discovery requests included Interrogatories and
8 *two copies* of my Requests for Admission, but no Requests for Production. In order to be on the
9 safe side, in case there was an office error on my end, I served the Requests for Production again
10 when I returned to the office on Monday, January 28, 2019.

11 6. At no point have I received any discovery requests from Defendant.

12 7. As of the time of filing my response to Defendant's summary judgment motion, I
13 had not yet received responses to my initial round of discovery requests.

14 8. There is still plenty of discovery that needs to take place in this case. For
15 example, in order to evaluate Defendant's status as a debt collector, Plaintiff needs more
16 documentation on the payment history, the default date, and the date Defendant obtained
17 servicing rights to the loan. In order to flesh out the merits of the FDCPA claim, Plaintiff needs
18 more information on a number of matters, including but not limited to: (a) what documentation
19 Defendant has, and has ever received, concerning this debt, and when; (b) what Defendant's
20 procedures are in reviewing that documentation; (c) any changes in those procedures since the
21 CFPB Consent Order; (d) the extent of Defendant's review of this specific account in response to
22 the Consent Order; (e) any policies and procedures to determine what accounts to send to
23 litigation, as well as any guidelines to determine when to cease litigation; (f) Defendant's intent
24 to follow-through with contested litigation; and (g) statistics of Defendant's litigation tactics. In
25 the event that the Court finds that Defendant has satisfied its initial burden, then these facts
26 would be essential to Plaintiff's opposition.

27 //

1 I declare under penalty of perjury that the foregoing is true and correct.

2 Executed this 1st day of February, 2019, in San Francisco, California.

3
4 /s/ Jon Erik Heath

5 J. Erik Heath
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28